

**Assembly Bill No. 1660**

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Passed the Assembly August 27, 2014

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*Chief Clerk of the Assembly*

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Passed the Senate August 26, 2014

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2014, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 12926 of the Government Code and to amend Sections 1653.5, 12800.7, and 12801.9 of the Vehicle Code, relating to driver's licenses.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1660, Alejo. Driver's licenses: nondiscrimination.

Existing law requires the Department of Motor Vehicles (DMV) to issue an original driver's license to a person who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law if he or she meets all other qualifications for licensure and provides satisfactory proof to the department of his or her identity and California residency.

Existing law makes it a violation of law, including, but not limited to, a violation of the Unruh Civil Rights Act, to discriminate against an individual because he or she holds or presents a driver's license issued under these provisions.

This bill would additionally make it a violation of the California Fair Housing and Employment Act (FEHA) for an employer or other covered entity to discriminate against an individual because he or she holds or presents a driver's license issued under these provisions or to require a person to present a driver's license, except as specified. The bill would making conforming changes to FEHA to specify that discrimination on the basis of national origin includes, but is not limited to, discrimination on the basis of possessing a driver's license granted under these provisions. The bill would also prohibit a governmental authority, or agent of a governmental authority, or person acting on behalf of a governmental authority, from discriminating against an individual because he or she holds or presents a license issued pursuant to those provisions. The bill would provide that an action taken by an employer to comply with any requirement or prohibition under the federal Immigration and Nationality Act is not a violation of law.

Existing law also prohibits using a driver's license issued under these provisions as a basis for a criminal investigation, arrest, or detention in circumstances where a person whose driver's license

was not issued under these provisions would not be criminally investigated, arrested, or detained.

This bill would make the prohibition against using a driver's license issued under those provisions as a basis for an investigation, arrest, or detention apply to citations and also apply regardless of whether the investigation, arrest, citation, or detention is criminal.

This bill would prohibit the DMV from disclosing to the public the information it obtains regarding the ineligibility of an applicant for a social security number, except as specified. The bill would provide that any document provided by an applicant to the DMV for purposes of proving his or her identity, true, full name, or California residency, or that the applicant's presence in the United States is authorized under federal law, is not a public record. The bill would also make driver's license information obtained by an employer exempt from disclosure under the California Public Records Act.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) “Employee” does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) “Employer” includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

“Employer” does not include a religious association or corporation not organized for private profit.

(e) “Employment agency” includes any person undertaking for compensation to procure employees or opportunities to work.

(f) “Essential functions” means the fundamental job duties of the employment position the individual with a disability holds or desires. “Essential functions” does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer’s judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) (1) “Genetic information” means, with respect to any individual, information about any of the following:

- (A) The individual's genetic tests.
- (B) The genetic tests of family members of the individual.
- (C) The manifestation of a disease or disorder in family members of the individual.

(2) "Genetic information" includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(3) "Genetic information" does not include information about the sex or age of any individual.

(h) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(i) "Medical condition" means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(j) "Mental disability" includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) “Limits” shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(k) “Military and veteran status” means a member or veteran of the United States Armed Forces, United States Armed Forces Reserve, the United States National Guard, and the California National Guard.

(l) “On the bases enumerated in this part” means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, or military and veteran status.

(m) “Physical disability” includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) “Limits” shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) “Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(n) Notwithstanding subdivisions (j) and (m), if the definition of “disability” used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical

disability, as defined in subdivision (j) or (m), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (j) and (m).

(o) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, or military and veteran status” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(p) “Reasonable accommodation” may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(q) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious belief, observance, and practice, including religious dress and grooming practices. “Religious dress practice” shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed. “Religious grooming practice” shall be construed broadly to include all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed.

(r) (1) “Sex” includes, but is not limited to, the following:

(A) Pregnancy or medical conditions related to pregnancy.

(B) Childbirth or medical conditions related to childbirth.

(C) Breastfeeding or medical conditions related to breastfeeding.

(2) “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s



gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

(s) "Sexual orientation" means heterosexuality, homosexuality, and bisexuality.

(t) "Supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(u) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:

(1) The nature and cost of the accommodation needed.

(2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.

(3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.

(4) The type of operations, including the composition, structure, and functions of the workforce of the entity.

(5) The geographic separateness or administrative or fiscal relationship of the facility or facilities.

(v) "National origin" discrimination includes, but is not limited to, discrimination on the basis of possessing a driver's license granted under Section 12801.9 of the Vehicle Code.

SEC. 2. Section 1653.5 of the Vehicle Code, as added by Section 4 of Chapter 524 of the Statutes of 2013, is amended to read:

1653.5. (a) Each form prescribed by the department for use by an applicant for the issuance or renewal by the department of a driver's license or identification card pursuant to Division 6 (commencing with Section 12500) shall contain a section for the applicant's social security account number.

(b) Each form prescribed by the department for use by an applicant for the issuance, renewal, or transfer of the registration or certificate of title to a vehicle shall contain a section for the applicant's driver's license or identification card number.

(c) Except as provided in Section 12801, a person who submits to the department a form that, pursuant to subdivision (a), contains a section for the applicant's social security account number, or pursuant to subdivision (b), the applicant's driver's license or identification card number, if any, shall furnish the appropriate number in the space provided.

(d) Except as provided in Section 12801, the department shall not complete an application that does not include the applicant's social security account number or driver's license or identification card number as required under subdivision (c).

(e) An applicant's social security account number shall not be included by the department on a driver's license, identification card, registration, certificate of title, or any other document issued by the department.

(f) Notwithstanding any other law, information regarding an applicant's social security account number, or ineligibility for a social security number, obtained by the department pursuant to this section, is not a public record and shall not be disclosed by the department except for any of the following purposes:

(1) Responding to a request for information from an agency operating pursuant to, and carrying out the provisions of, Part A (Block Grants to States for Temporary Assistance for Needy Families), or Part D (Child Support and Establishment of Paternity), of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) Implementation of Section 12419.10 of the Government Code.

(3) Responding to information requests from the Franchise Tax Board for the purpose of tax administration.

(g) This section shall become operative on January 1, 2015, or on the date that the director executes a declaration pursuant to Section 12801.11, whichever is sooner.

(h) This section shall become inoperative on the effective date of a final judicial determination made by any court of appellate jurisdiction that any provision of the act that added this section, or its application, either in whole or in part, is enjoined, found

unconstitutional, or held invalid for any reason. The department shall post this information on its Internet Web site.

SEC. 3. Section 12800.7 of the Vehicle Code is amended to read:

12800.7. (a) Upon application for an original or duplicate license the department may require the applicant to produce any identification that it determines is necessary in order to ensure that the name of the applicant stated in the application is his or her true, full name and that his or her residence address as set forth in the application is his or her true residence address.

(b) Notwithstanding any other law, any document provided by the applicant to the department for purposes of proving his or her identity, true, full name, California residency, or that the applicant's presence in the United States is authorized under federal law, is not a public record and may not be disclosed by the department except when requested by a law enforcement agency as part of an investigation.

SEC. 4. Section 12801.9 of the Vehicle Code is amended to read:

12801.9. (a) Notwithstanding Section 12801.5, the department shall issue an original driver's license to a person who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law if he or she meets all other qualifications for licensure and provides satisfactory proof to the department of his or her identity and California residency.

(b) The department shall adopt emergency regulations to carry out the purposes of this section, including, but not limited to, procedures for (1) identifying documents acceptable for the purposes of proving identity and California residency, (2) procedures for verifying the authenticity of the documents, (3) issuance of a temporary license pending verification of any document's authenticity, and (4) hearings to appeal a denial of a license or temporary license.

(c) Emergency regulations adopted for purposes of establishing the documents acceptable to prove identity and residency pursuant to subdivision (b) shall be promulgated by the department in consultation with appropriate interested parties, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including law enforcement representatives, immigrant rights

representatives, labor representatives, and other stakeholders, which may include, but are not limited to, the California Highway Patrol, the California State Sheriffs' Association, and the California Police Chiefs Association. The department shall accept various types of documentation for this purpose, including, but not limited to, the following documents:

(1) A valid, unexpired consular identification document issued by a consulate from the applicant's country of citizenship, or a valid, unexpired passport from the applicant's country of citizenship.

(2) An original birth certificate, or other proof of age, as designated by the department.

(3) A home utility bill, lease or rental agreement, or other proof of California residence, as designated by the department.

(4) The following documents, which, if in a language other than English, shall be accompanied by a certified translation or an affidavit of translation into English:

(A) A marriage license or divorce certificate.

(B) A foreign federal electoral photo card issued on or after January 1, 1991.

(C) A foreign driver's license.

(5) A United States Department of Homeland Security Form I-589, Application for Asylum and for Withholding of Removal.

(6) An official school or college transcript that includes the applicant's date of birth, or a foreign school record that is sealed and includes a photograph of the applicant at the age the record was issued.

(7) A United States Department of Homeland Security Form I-20 or Form DS-2019.

(8) A deed or title to real property.

(9) A property tax bill or statement issued within the previous 12 months.

(10) An income tax return.

(d) (1) A license issued pursuant to this section, including a temporary license issued pursuant to Section 12506, shall include a recognizable feature on the front of the card, such as the letters "DP" instead of, and in the same font size as, the letters "DL," with no other distinguishable feature.

(2) The license shall bear the following notice: "This card is not acceptable for official federal purposes. This license is issued

only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits.”

(3) The notice described in paragraph (2) shall be in lieu of the notice provided in Section 12800.5.

(e) If the United States Department of Homeland Security determines a license issued pursuant to this section does not satisfy the requirements of Section 37.71 of Title 6 of the Code of Federal Regulations, adopted pursuant to paragraph (11) of subdivision (d) of Section 202 of the Real ID Act of 2005 (Public Law 109-13), the department shall modify the license only to the extent necessary to satisfy the requirements of that section.

(f) Notwithstanding Section 40300 or any other law, a peace officer shall not detain or arrest a person solely on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person driving is under 16 years of age.

(g) The inability to obtain a driver’s license pursuant to this section does not abrogate or diminish in any respect the legal requirement of every driver in this state to obey the motor vehicle laws of this state, including laws with respect to licensing, motor vehicle registration, and financial responsibility.

(h) It shall be a violation of law to discriminate against a person because he or she holds or presents a license issued under this section, including, but not limited to, the following:

(1) It is a violation of the Unruh Civil Rights Act (Section 51 of the Civil Code), for a business establishment to discriminate against a person because he or she holds or presents a license issued under this section.

(2) (A) It is a violation of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) for an employer or other covered person or entity, pursuant to Section 12940 of the Government Code and subdivision (v) of Section 12926 of the Government Code, to discriminate against a person because the person holds or presents a driver’s license issued pursuant to this section, or for an employer or other covered entity to require a person to present a driver’s license, unless possessing a driver’s license is required by law or is required by the employer and the employer’s requirement is otherwise permitted by law. Nothing in this section shall be construed to limit or expand an employer’s authority to require a person to possess a driver’s license.

(B) Notwithstanding subparagraph (A), nothing in this section shall be construed to alter an employer's rights or obligations under Section 1324a of Title 8 of the United States Code regarding obtaining documentation evidencing identity and authorization for employment. An action taken by an employer that is required by the federal Immigration and Nationality Act (8 U.S.C. Sec. 1324a) is not a violation of law.

(3) It is a violation of Section 11135 of the Government Code for a state or local governmental authority, agent, or person acting on behalf of a state or local governmental authority, or a program or activity that is funded directly or receives financial assistance from the state, to discriminate against an individual because he or she holds or presents a license issued pursuant to this section.

(i) Driver's license information obtained by an employer shall be treated as private and confidential, is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall not be disclosed to any unauthorized person or used for any purpose other than to establish identity and authorization to drive.

(j) Information collected pursuant to this section is not a public record and shall not be disclosed by the department, except as required by law.

(k) A license issued pursuant to this section shall not be used to consider an individual's citizenship or immigration status, as a basis for an investigation, arrest, citation, or detention.

(l) On or before January 1, 2018, the California Research Bureau shall compile and submit to the Legislature and the Governor a report of any violations of subdivisions (h) and (k). Information pertaining to any specific individual shall not be provided in the report.

(m) In addition to the fees required by Section 14900, a person applying for an original license pursuant to this section may be required to pay an additional fee determined by the department that is sufficient to offset the reasonable administrative costs of implementing the provisions of the act that added this section. If this additional fee is assessed, it shall only apply until June 30, 2017.

(n) This section shall become operative on January 1, 2015, or on the date that the director executes a declaration pursuant to Section 12801.11, whichever is sooner.

(o) This section shall become inoperative on the effective date of a final judicial determination made by any court of appellate jurisdiction that any provision of the act that added this section, or its application, either in whole or in part, is enjoined, found unconstitutional, or held invalid for any reason. The department shall post this information on its Internet Web site.

SEC. 5. The Legislature finds and declares that Section 2 of this act, which amends Section 1653.5 of the Vehicle Code, Section 3 of this act, which amends Section 12800.7 of the Vehicle Code, and Section 4 of this act, which amends Section 12801.9 of the Vehicle Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Driver's license information obtained by an employer and information obtained by the Department of Motor Vehicles regarding the ineligibility of a driver's license applicant for a social security number or for purposes of proving an applicant's identity, true, full name, California residency, or authorized presence in the United States, should not be released to the public because the information is sensitive in nature and similar driver's license information is exempt from disclosure under existing law.

Approved \_\_\_\_\_, 2014

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*Governor*